

**REMARKS/ARGUMENTS**

Upon entry of the present amendment, claims 31, 33, 35-40, 43, 45, 50-52, 54, 56, and 58-60 are pending in the present application and under consideration. Claims 42, 44, 46-49, 53, 55, and 57 are canceled, claims 33, 43, 45, and 50 are amended, and new claims 58-60 are added by the present amendment.

The amendments to claims 33, 43, 45 and 50 are made to modify the claim dependency and/or to make the claim language consistent with independent claim 31 from which each of the amended claims depends directly or indirectly.

Support for new claims 58-60 can be found in the specification at, e.g., paragraph 0070 of the published application (US 2004/0062712 A1). No new matter is added by the present amendment.

**Double Patenting**

Claims 31, 33, 35-40, 42, 54, and 56 are rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1 and 2 of US Patent No. 7,435,870.

Without agreeing with the Examiner's position, Applicants herewith submit a terminal disclaimer directed to US Patent No. 7,435,870. Accordingly, Applicants respectfully request withdrawal of this ground of rejection.

**Priority**

The Examiner has maintained a denial of Applicants' priority claim, as set forth in the Office Action of August 3, 2006. See p. 3 of the OA. Applicants reiterate that the issue of priority does not currently appear to be material to the grounds of rejection raised by the Examiner, but reserve the right to address the issue if it becomes relevant in future proceedings.

**Claim Rejections - 35 U.S.C. §103**

Claims 42-53, 55 and 57 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over various combinations of Mizell *et al.*, *Int. J. Dev. Biol.*, 41:411-423 (1997),

Appl. No. 10/678,765  
Amdt. dated September 30, 2009  
Reply to Office Action of June 1, 2009


PATENT

Blader *et al.*, *Developmental Biology*, 201:185-201 (1998), Terse *et al.*, *Toxicon*, 31:913-919 (1993), Maccubbin *et al.*, *Aquatic Toxicology* 9:277-286 (1986), Black, *Aquatic Toxicology* 11:129-142 (1988), and Marty *et al.*, *Aquatic Toxicology* 17:45-62 (1990).

In an effort to advance prosecution of the present application, and without agreeing with the Examiner's position, Applicants have canceled claims 42, 44, 46-49, 53, 55, and 57, and amended claims 43, 45, 50 to depend directly or indirectly from claim 31. Dependent claims 51 and 52, which depend from claim 50, also now depend indirectly from claim 31. Claim 31 is not rejected under 35 U.S.C. 103(a). In view of the foregoing, Applicants submit that this rejection is moot, and respectfully request withdrawal of this ground of rejection.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

  
Lance A. Termes  
Reg. No. 43,184

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 650-326-2400  
Fax: 415-576-0300  
LAT:y1m  
62212711 v1